

§ 241.3

40 CFR Ch. I (7–1–13 Edition)

a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap.

Solid waste means the term solid waste as defined in 40 CFR 258.2.

Traditional fuels means materials that are produced as fuels and are unused products that have not been discarded and therefore, are not solid wastes, including: (1) Fuels that have been historically managed as valuable fuel products rather than being managed as waste materials, including fossil fuels (*e.g.*, coal, oil and natural gas), their derivatives (*e.g.*, petroleum coke, bituminous coke, coal tar oil, refinery gas, synthetic fuel, heavy recycle, asphalts, blast furnace gas, recovered gaseous butane, and coke oven gas) and cellulosic biomass (virgin wood); and (2) alternative fuels developed from virgin materials that can now be used as fuel products, including used oil which meets the specifications outlined in 40 CFR 279.11, currently mined coal refuse that previously had not been usable as coal, and clean cellulosic biomass. These fuels are not secondary materials or solid wastes unless discarded.

Within control of the generator means that the non-hazardous secondary material is generated and burned in combustion units at the generating facility; or that such material is generated and burned in combustion units at different facilities, provided the facility combusting the non-hazardous secondary material is controlled by the generator; or both the generating facility and the facility combusting the non-hazardous secondary material are under the control of the same person as defined in this section.

[76 FR 15549, Mar. 21, 2011, as amended at 78 FR 9211, Feb. 7, 2013]

Subpart B—Identification of Non-Hazardous Secondary Materials That Are Solid Wastes When Used as Fuels or Ingredients in Combustion Units

§ 241.3 Standards and procedures for identification of non-hazardous secondary materials that are solid wastes when used as fuels or ingredients in combustion units.

(a) Except as provided in paragraph (b) of this section or in § 241.4(a) of this subpart, non-hazardous secondary materials that are combusted are solid wastes, unless a petition is submitted to, and a determination granted by, the EPA pursuant to paragraph (c) of this section. The criteria to be addressed in the petition, as well as the process for making the non-waste determination, are specified in paragraph (c) of this section.

(b) The following non-hazardous secondary materials are not solid wastes when combusted:

(1) Non-hazardous secondary materials used as a fuel in a combustion unit that remain within the control of the generator and that meet the legitimacy criteria specified in paragraph (d)(1) of this section.

(2) The following non-hazardous secondary materials that have not been discarded and meet the legitimacy criteria specified in paragraph (d)(1) of this section when used in a combustion unit (by the generator or outside the control of the generator):

(i) [Reserved]

(ii) [Reserved]

(3) Non-hazardous secondary materials used as an ingredient in a combustion unit that meet the legitimacy criteria specified in paragraph (d)(2) of this section.

(4) Fuel or ingredient products that are used in a combustion unit, and are produced from the processing of discarded non-hazardous secondary materials and that meet the legitimacy criteria specified in paragraph (d)(1) of this section, with respect to fuels, and paragraph (d)(2) of this section, with respect to ingredients. The legitimacy criteria apply after the non-hazardous secondary material is processed to produce a fuel or ingredient product. Until the discarded non-hazardous secondary material is processed to produce a non-waste fuel or ingredient, the discarded non-hazardous secondary material is considered a solid waste and would be subject to all appropriate federal, state, and local requirements.

(c) The Regional Administrator may grant a non-waste determination that a non-hazardous secondary material that is used as a fuel, which is not managed within the control of the generator, is not discarded and is not a solid waste when combusted. This responsibility may be retained by the Assistant Administrator for the Office of Solid Waste and Emergency Response if combustors are located in multiple EPA Regions and the petitioner requests that the Assistant Administrator process the non-waste determination petition. If multiple combustion units are located in one EPA Region, the application must be submitted to the Regional Administrator for that Region. The criteria and process for making such non-waste determinations includes the following:

(1) Submittal of an application to the Regional Administrator for the EPA Region where the facility or facilities are located or the Assistant Administrator for the Office of Solid Waste and Emergency Response for a determination that the non-hazardous secondary material, even though it has been transferred to a third party, has not been discarded and is indistinguishable in all relevant aspects from a fuel product. The determination will be based on whether the non-hazardous secondary material that has been discarded is a legitimate fuel as specified in paragraph (d)(1) of this section and on the following criteria:

(i) Whether market participants treat the non-hazardous secondary material as a product rather than as a solid waste;

(ii) Whether the chemical and physical identity of the non-hazardous secondary material is comparable to commercial fuels;

(iii) Whether the non-hazardous secondary material will be used in a reasonable time frame given the state of the market;

(iv) Whether the constituents in the non-hazardous secondary material are released to the air, water or land from the point of generation to the point just prior to combustion of the secondary material at levels comparable to what would otherwise be released from traditional fuels; and

(v) Other relevant factors.

(2) The Regional Administrator or Assistant Administrator for the Office of Solid Waste and Emergency Response will evaluate the application pursuant to the following procedures:

(i) The applicant must submit an application for the non-waste determination addressing the legitimacy criteria in paragraph (d)(1) of this section and the relevant criteria in paragraphs (c)(1)(i) through (v) of this section. In addition, the applicant must also show that the non-hazardous secondary material has not been discarded in the first instance.

(ii) The Regional Administrator or Assistant Administrator for the Office of Solid Waste and Emergency Response will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be published in a newspaper advertisement or radio broadcast in the locality where the facility combusting the non-hazardous secondary material is located, and be made available on the EPA's Web site.

(iii) The Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response will accept public comments on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response will issue a final decision after receipt of comments and after a hearing (if any). If a determination is made that the non-hazardous secondary material is a non-waste fuel, it will be retroactive and apply on the date the petition was submitted.

(iv) If a change occurs that affects how a non-hazardous secondary material meets the relevant criteria contained in this paragraph after a formal non-waste determination has been granted, the applicant must re-apply to the Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response for a formal determination that the non-hazardous secondary material continues to meet the relevant criteria and, thus, is not a solid waste.

(d) Legitimacy criteria for non-hazardous secondary materials.

(1) Legitimacy criteria for non-hazardous secondary materials used as a fuel in combustion units include the following:

(i) The non-hazardous secondary material must be managed as a valuable commodity based on the following factors:

(A) The storage of the non-hazardous secondary material prior to use must not exceed reasonable time frames;

(B) Where there is an analogous fuel, the non-hazardous secondary material must be managed in a manner consistent with the analogous fuel or otherwise be adequately contained to prevent releases to the environment;

(C) If there is no analogous fuel, the non-hazardous secondary material must be adequately contained so as to prevent releases to the environment;

(ii) The non-hazardous secondary material must have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy.

(iii) The non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) which the combustion unit is designed to burn. In determining which traditional fuel(s) a unit is designed to burn, persons may choose a traditional fuel that can be or is burned in the particular type of boiler, whether or not the combustion unit is permitted to burn that traditional fuel. In comparing contaminants between traditional fuel(s) and a non-hazardous secondary material, persons can use data for traditional fuel contaminant levels compiled from national surveys, as well as contaminant level data from the specific traditional fuel being replaced. To account for natural variability in contaminant levels, persons can use the full range of traditional fuel contaminant levels, provided such comparisons also consider variability in non-hazardous secondary material contaminant levels. Such comparisons are to be based on a direct comparison of the contaminant levels in both the non-hazardous secondary material and traditional fuel(s) prior to combustion.

(2) Legitimacy criteria for non-hazardous secondary materials used as an ingredient in combustion units include the following:

(i) The non-hazardous secondary material must be managed as a valuable commodity based on the following factors:

(A) The storage of the non-hazardous secondary material prior to use must not exceed reasonable time frames;

(B) Where there is an analogous ingredient, the non-hazardous secondary material must be managed in a manner consistent with the analogous ingredient or otherwise be adequately contained to prevent releases to the environment;

(C) If there is no analogous ingredient, the non-hazardous secondary material must be adequately contained to prevent releases to the environment;

(ii) The non-hazardous secondary material must provide a useful contribution to the production or manufacturing process. The non-hazardous secondary material provides a useful contribution if it contributes a valuable ingredient to the product or intermediate or is an effective substitute for a commercial product.

(iii) The non-hazardous secondary material must be used to produce a valuable product or intermediate. The product or intermediate is valuable if:

(A) The non-hazardous secondary material is sold to a third party, or

(B) The non-hazardous secondary material is used as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(iv) The non-hazardous secondary material must result in products that contain contaminants at levels that are comparable in concentration to or lower than those found in traditional products that are manufactured without the non-hazardous secondary material.

[76 FR 15549, Mar. 21, 2011, as amended at 78 FR 9212, Feb. 7, 2013]

§ 241.4 Non-Waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel.

(a) The following non-hazardous secondary materials are not solid wastes